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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

CHARLES KNOCHE,

Plaintiff and Respondent,

v.

LAUREL MANTHIE,

Defendant and Appellant.

2d Civil No. B181318
(Super. Ct. No. PR040320)
(San Luis Obispo County)

Laurel Manthie appeals from a January 10, 2005 order removing her as trustee of the Gisela W. McMinn Revocable Trust, dated May 10, 2003, and appointing Bruno Arthur Jean Charles Knoche as successor trustee.¹ The trial court, in ordering appellant's removal as trustee, impliedly found that she had no life estate in the trust property. We affirm.

Facts and Procedural History

On May 10, 2003, Gisela McMinn executed a revocable trust drafted by Attorney Ronald P. Burd. The only assets of the trust was McMinn's personal

¹ Knoche died while this appeal was pending. On August 1, 2005, Knoche's daughter, Elisabeth Stephanie Knoche-Noailly, substituted in as his successor in interest. (Code Civ. Proc., § 377.31.)

property and a house at 195 Easter Street, Morro Bay where McMinn and appellant lived.

After McMinn died on November 9, 2003, McMinn's sister, Elisabeth Favero became the successor trustee and sole trust beneficiary. Favero retained Attorney Burd to represent her as trustee. She was concerned because appellant was still living in the house with two pit bulls and one of the dogs had assaulted a neighbor. Favero told appellant that she did not have to leave immediately but something had to be done about the dogs. Appellant agreed to move. Appellant, however, later said that the dogs were no longer at the house and that she was staying. Favore died August 13, 2004. The trust designated appellant as successor trustee and provided that the trust assets would be distributed to Knoche, McMinn's brother. Appellant claimed that she had the right to live in the house rent free, even though she had a fiduciary duty to rent or sell the house.

Knoche retained Attorney Burd and filed a petition to remove appellant as trustee. (Prob. Code, § 17200.) Before the hearing on the petition, appellant filed a motion to disqualify Burd. The trial court denied the motion and removed appellant as trustee. Knoche was appointed successor trustee. The order states that appellant "shall have the right to continue living in the Trust property located at 195 Easter, Morro Bay, California until Midnight February 28, 2005, provided she continues to pay all utilities and maintains the property in a habitable condition."

Life Estate

Appellant complains that the order is "narrow in scope" and fails to address whether she has a life estate or claim for quasi specific performance against the trust. Appellant opposed the petition on the ground that McMinn had told her that she could live in the house and that McMinn's estate would pay all expenses. This was refuted by Attorney Burd and Knoche who declared that McMinn and Favero made no mention of a life estate or an agreement to let appellant stay in the house cost free. When Burd and Knoche met with appellant to discuss the house, appellant did not say

that McMinn or Favero had told her that she could stay in the house for as long as she wanted.

The record further indicates that appellant did not file an action for a life estate or quasi specific performance within a year of McMinn's death as required by Code of Civil Procedure section 366.2. (See Prob. Code, § 19008; *Levine v. Levine* (2002) 102 Cal.App.4th 1256, 1262-1263.) By ordering appellant to vacate the premises, the trial court impliedly found that her claim to stay in the house was time barred. Where, as here, the appeal is based on a clerk's transcript or judgment roll, the evidence is conclusively presumed to support the judgment. (9 Witkin, Cal. Procedure, Appeal (4th ed. 1997)§ 354, p. 402; *National Secreterial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 522.)

Conflict of Interest

Appellant argues that the trial court erred in denying her motion to disqualify Attorney Burd. She claims that Burd has a conflict of interest because he drafted the trust for McMinn and represents Knoche as successor trustee. McMinn, however, was advised of the potential conflict of interest.² McMinn waived the conflict by signing a written waiver, as did Favero (the first successor trustee) and Knoche, consistent with California Rules of Professional Conduct, rule 3-310(C). An attorney is not precluded from accepting representation in the same general matter where his employment is not adverse to his former client. (*Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 711.)

The trial court reasonably concluded that McMinn's communications in the preparation and execution of the trust did not require Burd's disqualification. (See e.g., *Fletcher v. Superior Court* (1996) 44 Cal.App.4th 773, 778-779.) "There is no

² Paragraph 8.8 of the trust, entitled "Consent to Joint Representation[.]" states in pertinent part: "Settlor hereby expressly waives any potential conflict of interest in the event the successor Trustee wishes to hire Attorney, notwithstanding the potential adverse consequences of such joint representation"

[attorney-client] privilege . . . as to a communication relevant to an issue between parties all of whom claim through a deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction." (Evid. Code, § 957.)

The judgment is affirmed. Knoche's successor in interest, Elisabeth Stephanie Knoche-Noailly, is awarded costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Douglas Hilton, Judge
Superior Court County of San Luis Obispo

Laurel Mantie, in pro per, Appellant.

Ronald P. Burd, for Respondent.